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7
8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAY AREA PAINTERS AND TAPERS
PENSION TRUST FUND, et al.,

11 Plaintiffs,

12 v.

13 CONCORD DRYWALL, INC., a California
14 Corporation, and TIM TITSWORTH, an
individual,

15 Defendants.
16

Case No.: C12-0252 CW

**NOTICE AND ACKNOWLEDGMENT;
and**

**JUDGMENT PURSUANT TO
STIPULATION; [~~PROPOSED~~] ORDER
THEREON**

17 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment shall be
18 entered in the within action in favor of the Plaintiffs BAY AREA PAINTERS AND TAPERS
19 PENSION TRUST FUND, et al. (collectively “Plaintiffs” or “Trust Funds”) and against
20 Defendants CONCORD DRYWALL, INC., a California Corporation, and TIM TITSWORTH, an
21 individual, and/or alter egos and/or successor entities, as follows:

22 1. Defendants entered into a valid Collective Bargaining Agreement with the
23 District Council 16 of the International Union of Painters and Allied Trades (hereinafter
24 “Bargaining Agreement”). This Bargaining Agreement has continued in full force and effect to the
25 present time.

26 2. Defendant TIM TITSWORTH executed the Agreement of Employers Regarding
27 Bay Area Painters and Tapers Trust Funds on behalf of Defendant CONCORD DRYWALL,
28 INC., which provides that the person signing on behalf of employer is personally and individually

liable for the employer's contributions as required by the Bargaining Agreement.

3. Defendant TIM TITSWORTH, RMO/CEO/President of CONCORD DRYWALL, INC., acknowledges receipt of the following documents in this action both as an individual and on behalf of Defendant CONCORD DRYWALL, INC., a California Corporation: Summons; Complaint; ADR Dispute Resolution Procedures in the Northern District of California; Instructions for Completion of ADR Forms Regarding Selection of and ADR Process; Stipulation and [Proposed] Order Selecting ADR Process (Blank Form); Notice of Need for ADR Phone Conference (Blank Form); ADR Certification By Parties and Counsel (Blank Form); Notice of Assignment of Case to a United States Magistrate Judge for Trial; Consent to Proceed Before A United States Magistrate Judge (Blank Form); Declination to Proceed Before a Magistrate Judge and Request For Reassignment to A United States District Judge (Blank Form); Order Setting Initial Case Management Conference and ADR Deadlines; Standing Order For Magistrate Judge Jacqueline Scott Corley; Standing Order for All Judges of the Northern District of California, Contents of Joint Case Management Statement; Welcome to the U.S. District Court; Northern California ECF Registration Information Handout; Certification of Interested Entities or Persons Pursuant to Local Rule 3-16; Declination to Proceed Before a Magistrate Judge and Request For Reassignment to A United States District Judge; Notice of Impending Reassignment to a United States District Court Judge; Reassignment Order; Case Management Scheduling Order for Reassigned Civil Cases.

4. Defendants have become indebted to the Trust Funds as follows:

Work Period	Unpaid Contributions	20% Liquidated Damages*	5% Interest (thru 1/25/12)	
Aug-11	6,809.04	1,361.81	108.81	
Sept-11	2,364.30	472.86	27.52	
Oct-11	8,349.18	1,669.84	63.84	
Subtotals:	\$17,522.52	\$3,504.51	\$200.17	
Unpaid Contributions, Liquidated Damages & Interest (Apr-11 through Dec-11, breakdown above)				\$21,227.20
Attorneys' Fees (through 1/23/12)				\$813.50
Complaint Filing Fee				\$350.00
Grand Total:				\$22,390.70

1 5. Defendants shall *conditionally* pay the amount of **\$18,886.19**, representing all of
 2 the above amounts, **less liquidated damages in the amount of \$3,504.51. This waiver is**
 3 ***expressly conditioned upon the Trustees' approval upon timely compliance with all of the terms***
 4 ***of this Stipulation***, as follows:

5 (a) Beginning on or before January 31, 2012, and on or before the last business
 6 day of each month thereafter, for a period of twelve (12) months, through and including December
 7 31, 2012, Defendant shall pay to Plaintiffs the amount of **\$1,617.00** per month;

8 (b) Payments may be made by joint check to Defendant and Plaintiffs' Trust
 9 Funds, and if so, shall be endorsed by Defendants prior to submission to Plaintiffs;

10 (c) Defendants shall have the right to increase the monthly payments at any
 11 time, without penalty;

12 (d) Payments shall be applied first to unpaid interest and then to unpaid
 13 principal. The unpaid principal balance shall bear interest at the rate of 5% per annum, from
 14 January 26, 2012, in accordance with Plaintiffs' Trust Agreements;

15 (e) Payments shall be made payable to the "*District Council 16 Northern*
 16 *California Trust Funds*" and delivered to Muriel B. Kaplan at Saltzman & Johnson Law
 17 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other
 18 address as may be specified by Plaintiffs, **to be received on or before the last business day of**
 19 **each month.**

20 (f) Defendants shall pay all additional costs and attorneys' fees incurred by
 21 Plaintiffs in connection with collection and allocation of the amounts owed by Defendants to
 22 Plaintiffs under this Stipulation, regardless of whether or not there is a default herein.

23 (g) Prior to December 31, 2012, the deadline for Defendants' last monthly
 24 payment toward the conditional balance owed under the Stipulation, Plaintiffs shall notify
 25 Defendants in writing of the final amount due, including any additional interest and attorneys' fees
 26 and costs, as well as any other amounts due under the terms herein. Any additional amounts due
 27 pursuant to the provisions hereunder shall be paid in full with the final conditional stipulated
 28 payment.

1 (h) Following Defendants' payment of their last conditional monthly payment
 2 under the Stipulation, Defendants will be advised as to whether or not the waiver has been granted
 3 by the Board of Trustees. If the waiver is granted, upon bank clearance of Defendants' last
 4 payment of the conditional balance and confirmation that Defendants' account is otherwise
 5 current, Plaintiffs will file a Notice of Satisfaction of Judgment with the Court. However, if the
 6 waiver is denied, monthly payments will continue until all liquidated damages due have been paid.

7 (i) Failure to comply with any of the above terms shall constitute a default of
 8 Defendants' obligations under this Stipulation and the provisions of ¶11 shall apply.

9 (j) **Plaintiffs acknowledge receipt of Defendants' recent payment (checks**
 10 **numbered 28371 and 28407 in the total sum of \$3,000.00) and are crediting said payments**
 11 **the amounts listed above, upon bank clearance.**

12 5. Beginning with contributions due for hours worked by Defendants' employees
 13 during the month of December 2011, which are due on January 15, 2012 and delinquent if not
 14 received by January 31, 2012, and for every month thereafter, Defendants **shall remain current**
 15 **in reporting and payment of any contributions** due to Plaintiffs under the current Collective
 16 Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and
 17 the Declarations of Trust as amended. **Defendants shall submit a copy of the contribution**
 18 **report for each month, together with a copy of that payment check, by facsimile to Muriel B.**
 19 **Kaplan at 415-882-9287, or to such other fax number as may be specified by Plaintiffs, prior**
 20 **to sending the payment to the Trust Fund office.** Failure by Defendants to timely submit copies
 21 of current contribution reports and payments to Muriel B. Kaplan as described above shall
 22 constitute a default of the obligations under this agreement.

23 6. Defendants shall make full disclosure of all jobs on which they are working by
 24 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the
 25 name and address of job, general contractor information, certified payroll if a public works job,
 26 and period of work. **Defendants shall submit said updated list each month together with the**
 27 **contribution report (as required by this Stipulation) by facsimile to Muriel B. Kaplan at 415-**
 28 **882-9287.** This requirement remains in full force and effect regardless of whether or not

1 Defendants have ongoing work. In this event, Defendants shall submit a statement stating that
 2 there are no current jobs. A blank job report form is attached hereto as *Exhibit A* for Defendants'
 3 use. To the extent that Defendants are working on a Public Works job, or any other job for which
 4 Certified Payroll Reports are required, copies of said Reports will be mailed or faxed to Muriel B.
 5 Kaplan, concurrently with their submission to the general contractor, owner or other reporting
 6 agency. Failure by Defendants to timely submit updated job lists shall constitute a default of the
 7 obligations under this agreement.

8 7. Failure by Defendants to remain current in reporting or payment of contributions
 9 shall constitute a default of the obligations under this agreement. Any such unpaid or late paid
 10 contributions, together with 20% liquidated damages and 5% per annum interest accrued on
 11 contributions, shall be added to and become a part of this Judgment and subject to the terms
 12 herein. Plaintiffs reserve all rights available under the applicable Bargaining Agreement and
 13 Declarations of Trust of the Trust Funds for collection of current and future contributions, and for
 14 any additional past contributions not included herein as may be determined by Plaintiffs, pursuant
 15 to employee timecards or paystubs, by audit, or other means, and the provisions of this agreement
 16 are in addition thereto. Defendants specifically waive the defense of the doctrine *res judicata* as to
 17 any such additional amounts determined as due.

18 8. **Audit:** Should the Trust Funds request an audit of Defendants' payroll records in
 19 order to confirm proper reporting and payment of contributions pursuant to the Bargaining
 20 Agreement, any failure by Defendants to comply with said request or with an audit in progress, if
 21 any, shall constitute a default of the obligations under this Agreement.

22 (a) If Defendants are unable to make payment in full as may be found due on
 23 any such audit, Defendants may request that Plaintiffs revise this Judgment, modifying the
 24 payment plan (by monthly amount and/or payment term), to add the amounts found due in the
 25 audit, subject to the terms herein. If the Judgment is so revised, Defendants shall execute the
 26 Amendment to Judgment within ten (10) days of its submission to Defendants. Failure to execute
 27 the revised agreement shall constitute a default of the terms herein.

28 (b) Failure by Defendants to submit either payment in full or request the

1 addition of the amounts found due on audit to this Judgment within ten (10) days of the date of
 2 Plaintiffs demand shall constitute a default of the obligations under this agreement. All amounts
 3 found due on audit shall immediately become part of this Judgment.

4 8. In the event that any check is not timely submitted, is submitted by Defendants but
 5 fails to clear the bank, or is unable to be negotiated for any reason for which Defendants are
 6 responsible, this shall be considered to be a default on the Judgment entered. If Defendants fail to
 7 submit their contribution reports, and/or certified payroll reports (if any) and/or job lists, and/or
 8 fails to comply with *any* of the terms of the Stipulation herein, this too shall constitute a default.

9 9. Defendants and any additional entities in which TIM TITSWORTH is an officer,
 10 owner or possesses any ownership interest, including all successors in interest, assignees, and
 11 affiliated entities (including, but not limited to parent or other controlling companies), and any
 12 companies with which CONCORD DRYWALL, INC. joins or merges, if any, shall also be bound
 13 by the terms of this Stipulation. Defendants and all such entities specifically consent to the Court's
 14 jurisdiction, in which shall be specified in writing at the time of any assignment, affiliation or
 15 purchase of Defendant, along with the obligations to the terms herein.

16 10. If a default occurs, Plaintiffs shall make a written demand, sent to Defendants by
 17 facsimile to 925-825-9583 and by regular mail, to cure said default within seven (7) days of the
 18 date of the notice from Plaintiffs. If Defendants elect to cure said default, and Plaintiffs elect to
 19 accept future payments, all such payments shall be made by cashier's check if the default is caused
 20 by a failed check.

21 11. In the event the default is not cured, all amounts remaining due hereunder, as well
 22 as any additional amounts due pursuant to the terms herein, shall be due and payable on demand
 23 by Plaintiffs as follows:

24 (a) The entire amount of **\$22,390.70** plus interest, reduced by principal
 25 payments received by Plaintiffs, but increased by any unpaid contributions then due, including
 26 audit findings, if any, plus 20% liquidated damages and 5% per annum interest thereon shall be
 27 immediately due, together with any additional attorneys' fees and costs incurred;

28 (b) A Writ of Execution may be obtained against Defendants and all related

1 entities without further notice, in the amount of the unpaid balance, plus any additional amounts
2 due under the terms herein. The declaration of a duly authorized representative of the Plaintiffs
3 setting forth any payment theretofore made by or on behalf of Defendants, and the balance due
4 and owing as of the date of default, shall be sufficient to secure the issuance of a Writ of
5 Execution. Defendants specifically decline the authority of a Magistrate Judge for all proceedings
6 herein;

7 (c) Defendants waive notice of entry of judgment and expressly waive all rights
8 to stay of execution and appeal.

9 12. Any failure on the part of the Plaintiffs to take any action against Defendants as
10 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed
11 a waiver of any subsequent breach by the Defendants of any provisions herein.

12 13. In the event of the filing of a bankruptcy petition by Defendants, the parties agree
13 that any payments made by Defendants pursuant to the terms of this judgment, shall be deemed to
14 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
15 and shall not be claimed by Defendants as a preference under 11 U.S.C. Section 547 or otherwise.
16 Defendants nevertheless represent that no bankruptcy filing is anticipated.

17 14. Should any provision of this Stipulation be declared or determined by any court of
18 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
19 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
20 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
21 Stipulation.

22 15. This Stipulation is limited to the agreement between the parties with respect to the
23 delinquent contributions and related sums enumerated herein, owed by Defendants to the
24 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
25 Defendants acknowledge that the Plaintiffs expressly reserve their right to pursue withdrawal
26 liability claims, if any, against Defendants as provided by the Plaintiffs' Plan Documents, the
27 Trust Agreements incorporated into the Collective Bargaining Agreement, and the law.

28 16. This Stipulation contains all of the terms agreed by the parties and no other

1 agreements have been made. Any changes to this Stipulation shall be effective only if made in
2 writing and signed by all parties hereto.

3 17. This Stipulation may be executed in any number of counterparts and by facsimile,
4 each of which shall be deemed an original and all of which shall constitute the same instrument.

5 18. The parties agree that the Court shall retain jurisdiction of this matter until this
6 Judgment is satisfied.

7 19. All parties represent and warrant that they have had the opportunity to be or have
8 been represented by counsel of their own choosing in connection with entering this Stipulation
9 under the terms and conditions set forth herein, that they have read this Stipulation with care and
10 are fully aware of and represent that they enters into this Stipulation voluntarily and without
11 duress.

12 Dated: February 13, 2012

CONCORD DRYWALL, INC., a California Corporation

14 By: /S/
15 TIMOTHY R. TITSWORTH, its
RMO/CEO/President

16 Dated: February 13, 2012

TIM TITSWORTH, an individual

18 By: /S/
19 TIMOTHY R. TITSWORTH

20 Dated: February 21, 2012

SALTZMAN & JOHNSON LAW CORPORATION

22 By: /S/
23 MURIEL B. KAPLAN
Attorneys for Plaintiffs, Bay Area Painters &
Tapers Trust Funds

24 **IT IS SO ORDERED.**

25 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
retain jurisdiction over this matter.

26 Dated: _____, 2012

27 _____
28 UNITED STATES DISTRICT COURT JUDGE

Exhibit A**JOB REPORT FORM**

***** Updated report must be faxed to Muriel B. Kaplan, Esq., at (415) 882-9287
on or before the last business day of each month *****

Employer Name: **CONCORD DRYWALL, INC.**

Report for the month of _____, 2012_Submitted by (name): _____

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

*** Attach additional sheets as necessary ***

1 agreements have been made. Any changes to this Stipulation shall be effective only if made in
2 writing and signed by all parties hereto.

3 17. This Stipulation may be executed in any number of counterparts and by facsimile,
4 each of which shall be deemed an original and all of which shall constitute the same instrument.

5 18. The parties agree that the Court shall retain jurisdiction of this matter until this
6 Judgment is satisfied.

7 19. All parties represent and warrant that they have had the opportunity to be or have
8 been represented by counsel of their own choosing in connection with entering this Stipulation
9 under the terms and conditions set forth herein, that they have read this Stipulation with care and
10 are fully aware of and represent that they enters into this Stipulation voluntarily and without
11 duress.

12 Dated: February 13, 2012

CONCORD DRYWALL, INC., a California Corporation

13
14 By: 

TIMOTHY R. TITSWORTH, its
RMO/CEO/President

15
16 Dated: February 13, 2012

TIM TITSWORTH, an individual

17
18 By: 

TIMOTHY R. TITSWORTH

19 Dated: February 21, 2012

SALTZMAN & JOHNSON LAW CORPORATION

20
21 By: 

MURIEL B. KAPLAN
Attorneys for Plaintiffs, Bay Area Painters &
Tapers Trust Funds

22
23 **IT IS SO ORDERED.**

24 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
25 retain jurisdiction over this matter.

26 Dated: February 24, 2012

27 

UNITED STATES DISTRICT COURT JUDGE